

1 IN THE UNITED STATES DISTRICT COURT
2

3 FOR THE EASTERN DISTRICT OF VIRGINIA
4

5 RICHMOND DIVISION
6

7 KATHY STEELE, Administrator of the Estate
8 of Robert David Steele
9

-and-

10 EARTH INTELLIGENCE NETWORK
11 Plaintiff,
12

vs.
13

JASON GOODMAN
14

Defendant
15

Case No.: 3:21-cv-00573-JAG
16

**MOTION SEEKING LEAVE TO FILE
INTERLOCUTORY APPEAL AND TO
STAY PROCEEDINGS PENDING
JUDGMENT**

17 Defendant Jason Goodman (“Goodman”) by and for himself pro se, respectfully moves
18 the Court for leave to file an interlocutory appeal pursuant to 28 U.S. Code § 1292(b) by and
19 with the attached form Notice of Appeal from the United States Court of Appeals for the Fourth
20 Circuit. Goodman seeks interlocutory judgment on this Court’s order issued April 27, 2023
21 (ECF No. 85) because it involves a controlling question of law as to which there is substantial
22 ground for difference of opinion and an immediate appeal from the order would materially
23 advance the ultimate termination of this litigation.

24 **INTRODUCTORY STATEMENT**

25 28 U.S. Code § 1292(b) grants District Court Judges the authority to issue an order
26 permitting interlocutory appeal of an order or judgment, when that judge “shall be of the opinion
27 that such order involves a controlling question of law as to which there is substantial ground for
28 difference of opinion and that an immediate appeal from the order may materially advance the
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1 ultimate termination of the litigation.” Granting an interlocutory appeal does not automatically
2 stay proceedings in the district court, but proceedings may be stayed should the requisite judges
3 so order. Goodman now seeks leave of the Court to grant an order for interlocutory appeal and
4 to stay these proceedings including discovery pending judgment from the Fourth Circuit.
5

6 ARGUMENT

7 On November 16, 2021, the Court acted within its discretion by allowing Kathy Steele
8 (“Steele”) executor of the estate of Robert David Steele, (“RDS”) to substitute as plaintiff. The
9 Court proceeded ultra vires when it appointed Steele as a director, receiver, or surrogate to the
10 board and allowed her to act on behalf of tax-exempt public charity Earth Intelligence Network
11 (“EIN”) despite her being disqualified pursuant to the by-laws, articles of incorporation and the
12 Virginia Nonstock Corporations Act. At the time of the substitution, among other claims, the
13 Court was considering an unauthorized use of name and picture claim. This raised questions of
14 property rights and pecuniary damage to RDS’ estate. It is not denied that Steele is the executor
15 of RDS’ estate and had a right to defend it. Even if the Court has legal authority to appoint a
16 receiver or surrogate to EIN’s board, it must be someone who qualifies as a director by the laws
17 which EIN is organized in order for it to maintain standing pursuant to FRCP Rule 17(b)(2).
18

19 Because the Court has rested on its decision citing only cases in which executors or heirs
20 had standing to defend property rights and not defamation claims, and because the Fourth Circuit
21 has upheld that defamation claims are only cognizable when they pertain to living parties, there
22 is substantial ground for difference of opinion. The Fourth Circuit must determine if dismissal of
23 plaintiffs’ unauthorized use of name and picture claims caused plaintiffs to lose standing with
24 regard to the remaining defamation claims. The Court has not cited any law or legal precedent
25

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that allows a defamation claim to survive the death of the original claimant giving substantial ground for difference of opinion and the need for a determination by the Appellate Court.

The Fourth Circuit has already decided in *Carroll v City of Westminster* that heirs or executors may not continue defamation cases for deceased parties (ECF No. 87 page 2 line 20).

The Court has not cited another case or ruling that guides this matter, but it has decided in favor of the plaintiffs to wrongly continue the case. The Fourth Circuit must determine if the District Court acted ultra vires when it construed a defamation claim maintained by an executor of a deceased party as cognizable in the Commonwealth of Virginia and sufficient to continue the case. The Fourth Circuit must further determine if the Court acted ultra vires in appointing a legally disqualified director as the receiver or surrogate to the board of directors of EIN.

CONCLUSION

In the interest of judicial efficiency, to answer the controlling questions of law to which there is substantial ground for difference of opinion, to serve justice and for any other reason that the Court may find, the Court should grant an order for an interlocutory appeal in the Fourth Circuit Court of the United States on the ruling issued April 27, 2023 (ECF No. 85) and stay these proceedings including discovery, pending a decision from the Appellate Court.

Signed this 5th day of May 2023

Respectfully submitted,

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